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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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CC Docket No. 96-98

In the Matter of

Implementation of the
Local Competition Provisions of the
Telecommunications Act of 1996

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To: The Commission

COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
ON PETITIONS FOR RECONSIDERATION

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DATED: March 22, 2000

SUMMARY

CompTel agrees with many of the petitioners who believe that the *Third Report and Order* generally gives careful and thoughtful content to the “necessary” and “impair” standards, and correctly applies those standards in determining which elements the ILECs must unbundle. However, like most of these petitioners, CompTel believes that a few issues must be reconsidered or clarified in order to ensure that the full benefits of competition are available to all consumers, whether business or residential, throughout the nation.

It is particularly important for the needs of residential and small business users that the Commission reconsider its four-line rule regarding the exemption from the obligation to unbundle local switching. As AT&T, Birch, MCI WorldCom and Sprint all demonstrate, residential and small business users will suffer from fewer choices among service providers, and higher local rates from reduced local competition, unless the Commission narrows the local switching exemption by expanding the four-line rule. In addition, the Commission should clarify that customers who currently receive service through local switching UNEs will continue to do so even if they grow to the point that they meet the criteria for exemption. For the same reasons, the Commission must deny Bell Atlantic’s request to remove the geographic and EEL limitations on the local switching exemption. However, should the Commission find that the geographic and EEL limitations are indeed arbitrary, it should eliminate the exemption altogether in order to foster local competition as envisioned by the 1996 Act.

CompTel also agrees with AT&T, Intermedia, MCI WorldCom and Sprint that the Commission should reconsider its decision on the unbundling of packet switching and transport. Packet switching and transport meet the impair standard, and the Commission erred by departing from that standard based on the unsupported and incorrect assumption that ILECs will slow deployment of advanced services if required to provide access to unbundled packet

switching and transport. The evidence on the record demonstrates that ILECs are deploying packet switching and transport rapidly in order to serve this fast-growing market segment and to prevent cable modem services from gaining a first-to-market advantage. The ILECs' market-based incentives would be unaffected by any requirement to unbundle packet switching and transport. CompTel's petition for reconsideration focused on the need for interoffice packet switching and interoffice transport to be placed on the mandatory UNE list, and CompTel fully supports the requests of most petitions for broadly defined packet switching and transport UNEs.

The Commission should also require ILECs to unbundle OS/DA as the petitions of AT&T, MCI WorldCom and RCN demonstrate. Without unbundled access to OS/DA, competitive carriers will be precluded from competing in many areas throughout the nation, and public safety could be compromised where local operators do not rely on PSAPs for 911 services. Finally, CompTel supports those petitions that request the Commission to reconsider its decision on line-sharing.

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**COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
ON PETITIONS FOR RECONSIDERATION**

The Competitive Telecommunications Association ("CompTel"),¹ by its attorneys, hereby submits these comments on the petitions for reconsideration of AT&T Corp., Bell Atlantic, Birch Telecom, Inc., Intermedia Communications Inc., MCI WorldCom, Inc., RCN Telecom Services, Inc. and Sprint Corporation of the *Third Report and Order*, as amended by its *Supplemental Order*, in the above-captioned docket.²

As explained more fully below, CompTel supports those petitions that request the Commission to (1) narrow the local switching exemption by modifying the four-line rule and clarifying that customers who currently receive service through local switching UNEs will continue to do so even if they subsequently meet the criteria for exemption, (2) order ILECs to unbundle packet switching (including DSLAMs) and transport, and (3) clarify the OS/DA

¹ CompTel is the leading trade association representing competitive communications firms and their suppliers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238 (1999) ("*Third Report and Order*").

unbundling requirement. CompTel strongly opposes Bell Atlantic's request that the Commission reconsider the geographic aspects of its unbundling exemption.

I. THE COMMISSION SHOULD RECONSIDER ITS FOUR-LINE CUTOFF FOR EXEMPTION FROM UNBUNDLING OF LOCAL SWITCHING

Many of the petitions for reconsideration, including those of AT&T,³ Birch,⁴ MCI WorldCom⁵ and Sprint,⁶ agree with CompTel that the Commission should reconsider the four-line cutoff regarding the exemption from the unbundling requirement for local switching, which is not based on the impair standard or supported by the facts. These petitions demonstrate that the four-line cutoff is irrational and unworkable, and therefore must be narrowed in order to reflect business reality and comport more closely with the impair standard. Although CompTel and various other parties have proposed different cutoffs, CompTel would emphasize that all of the proposals are preferable to the current rule. The modest differences among the cutoff proposals should not obscure the fundamental agreement among the petitioners that the FCC should modify the current four-line rule in order to narrow the local switching exemption.

Sprint correctly observes in its petition that small businesses almost always use more than 3 phone lines, and many in reality use an average of between 22 and 56 lines.⁷ Based on this fact, Sprint requests the Commission to use 39 lines (which is the midpoint average for small businesses), 15 key trunks or more than 50 Centrex lines as the cut-off point for the exemptions. CompTel agrees with Sprint that the four-line rule has no basis in fact and that

³ See AT&T Petition at 12-19.

⁴ See Birch Petition at 3-9.

⁵ See MCI WorldCom Reconsideration Petition at 20-23.

⁶ Sprint Petition at 7-9.

⁷ *Id.* at 8.

adopting Sprint's proposal would make competitive local services more widely available at competitive prices to small business subscribers.

CompTel also agrees with those petitioners who focused on the line concentration level at which it becomes feasible to employ multiplexed loop facilities as a logical cutoff point under the impair standard.⁸ As CompTel has explained, the manual provisioning systems of the ILECs impose excessive costs and delays on competitive carriers that order termination of individual circuits.⁹ Where carriers seek higher capacity end-user interfaces, the non-recurring costs to establish a serving arrangement become a smaller percentage of the overall cost of service.¹⁰ Therefore, it would be logical for the Commission to tailor any local switching exemption to its analysis of the costs and delays of ordering termination of circuits.

Such an analysis supports the DS-1 cutoff that CompTel and other petitioners propose. The current four-line rule simply does not reflect the actual economic and operational considerations that new entrants face when they assess the viability of aggregating multiple loops at a customer's location.¹¹ As CompTel demonstrated in its petition, the four-line rule ignores the reality of serving today's *small* business and residential market.¹² As both AT&T and Sprint observe, more than 20 percent of all business customers in density Zone 1 locations have four or more lines.¹³ Many of these businesses are in the same position, from an economic and operational standpoint, as those with three or fewer lines at a location, because competitive

⁸ AT&T Petition at 14.

⁹ CompTel Petition at 4.

¹⁰ *Id.*

¹¹ AT&T Petition at 13.

¹² *See, e.g.*, CompTel Petition at 4.

¹³ AT&T Petition at 17.

carriers currently must serve them only through the standard, manual hot-cut provisioning of analog loops.¹⁴ Therefore, the Commission should reconsider the four-line rule because it bears no relationship to the actual economic tradeoffs that competitive carriers face when considering whether it is economically rational to aggregate voice grade loops onto a higher capacity facility.¹⁵

AT&T, Birch and MCI WorldCom agree with CompTel that many competitive carriers use self-supplied switching capacity to provide service at the DS-1 interface level. A DS-1 facility allows a competitive carrier to avoid the cumbersome manual hot-cut provisioning processes for individual loops that the Commission has found to impair the ability of carriers to compete without the unbundled local switching UNE.¹⁶ Accordingly, the DS-1 interface would ensure that *small* business and residential users have a choice of providers.

Although many of the petitioners agree that the Commission should focus on the use of DS-1 interfaces in establishing the cutoff point, the petitioners have varying proposals regarding the specific number of lines at which customers typically shift to DS-1 service.¹⁷ CompTel urges the Commission not to try to guess at the precise cross-over point at which carriers prefer to order DS-1 service rather than multiple lines. That cross-over point varies from one carrier to another, changes over time, and varies depending upon market conditions and carriers' individual cost characteristics. Indeed, the ILECs themselves can influence the cross-over point by means of their pricing of DS-1 services. Rather than trying to hit a moving target,

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 15.

¹⁶ *Id.* at 16.

¹⁷ *See, e.g., id.* (stating that currently customers begin using a DS-1 loop facility once they have 16 lines or more, but that newer DSL technology may ultimately permit competitive carriers efficiently to aggregate loops for customers with as few as eight lines).

the Commission, as both CompTel and MCI WorldCom proposed, should simply use the DS-1 interface itself as the cutoff point. A carrier should be able to obtain local switching as a mandatory UNE anytime it orders service on a line-by-line basis (up to 24 lines) rather than as a DS-1 service.

As MCI WorldCom demonstrates, the DS-1 interface is administratively much more stable than any line-based boundary, and it more closely fits the impairment criteria set forth in the Commission's order.¹⁸ By using the DS-1 interface as the exception boundary, there is far less opportunity for ILECs to deny competitive carriers access to unbundled local switching by disputing the line count.

CompTel also supports AT&T's request that the Commission clarify that, for exemption purposes: (1) if there are multiple end users at a single physical location, each customer must be treated as a separate "end user;" (2) if a single business customer has multiple physical locations in an area, each location must be treated as a separate "end user;" and (3) lines employing DSL technology, where no connection to the circuit switched network is likely (which is true for all DSL technologies except ADSL) must not be counted towards the exemption.¹⁹ Each of these clarifications is vital to ensure that the exemption relates directly to the impairment standard. Without these clarifications, the ILECs will be able to stifle competition by manipulating the exemption to avoid providing access to unbundled local switching.

Finally, CompTel agrees with Birch and AT&T that ILECs should be required to continue providing unbundled switching to individual consumers that subsequently outgrow the

¹⁸ MCI WorldCom Reconsideration Petition at 22.

¹⁹ AT&T Petition at 17-18.

exemption, if any, from the unbundling requirement for local switching.²⁰ The addition of a line at the customer's location should never cause pre-existing service arrangements using unbundled local switching to be disrupted or displaced. Competitive neutrality will be seriously compromised unless the Commission adopts this clarification, because competitive carriers and their customers could find themselves without the ability to have unbundled local switching for any of their lines, and even disrupted service as the unbundled local switching is withdrawn.²¹

II. THE COMMISSION SHOULD DENY BELL ATLANTIC'S PETITION TO RECONSIDER THE LIMITATIONS ON THE LOCAL SWITCHING EXEMPTION

CompTel strongly opposes Bell Atlantic's petition for reconsideration. With respect to unbundled local switching, Bell Atlantic urges the Commission to make two adjustments to its geographic exemption for the unbundling requirement. First, Bell Atlantic asks the Commission to eliminate limitations on the local switching exemption regarding Zone 1 areas and the top 50 MSAs.²² Second, Bell Atlantic argues that the Commission should eliminate the switch unbundling obligation in other situations where alternative switching facilities are in use.²³ Bell Atlantic claims that limiting the unbundled local switching exemption to Zone 1 areas in the top 50 MSAs does not square with the Commission's own conclusions from its impairment analysis, and that these restrictions arbitrarily exclude significant areas of the country where competitors are providing service using their own local switches. Bell Atlantic also argues that the Commission should not limit switch unbundling relief to business

²⁰ See, e.g., *id.* at 18; Birch Petition at 9.

²¹ AT&T Petition at 19.

²² See Bell Atlantic Petition at 6-11.

²³ See *id.*

customers with four or more lines. Finally, Bell Atlantic urges the Commission to eliminate the availability of EELs as a prerequisite for relief from the switch unbundling. In essence, Bell Atlantic argues that the Commission should remove unbundled local switching as a mandatory UNE across the nation.

Apart from the four-line rule, the Commission's limits to the exemption from local switching are based on a careful and thoughtful application of the impair standard. After examining the evidence in the record, the Commission limited the exemption from local switching to customers in density Zone 1 in the top 50 MSAs where ILECs have provided nondiscriminatory, cost-based access to the EEL because, among other things: (1) four or more competitive switches have been deployed in 96 percent of the top 50 MSAs;²⁴ (2) the revenue potential of serving markets outside the top 50 MSAs is unlikely to outweigh the costs of collocating in these markets;²⁵ (3) competitive carriers serving areas outside of Zone 1 are not able to self-provide switching efficiently enough to counter ILEC scale economies;²⁶ and (4) EELs must be available in order to reduce collocation costs sufficiently to justify the exemption.²⁷ As the Commission already has found, the presence of some competitive switches alone is not evidence that competitive carriers are not impaired without access to unbundled local switching, as Bell Atlantic suggests.²⁸ The fact that some competitive carriers have installed

²⁴ *Third Report and Order* at ¶281.

²⁵ *Id.* at ¶284.

²⁶ *Id.* at ¶287.

²⁷ *Id.* at ¶¶288-89.

²⁸ *See, e.g., id.* at ¶¶256-58; *See also id.* at ¶256 ("The fact that a single carrier is collocated in a particular central office and is not using unbundled switching does not conclusively demonstrate that a variety of carriers can self-provision switches without significant costs or other impediments that diminish a collocating carrier's ability to provide the services it seeks to offer.").

switches is merely a factor in the impairment analysis, not a proxy for a fully competitive market.²⁹

In any event, Bell Atlantic's arguments prove too much. To the extent the Commission finds that it is impossible to craft a local switching exemption that tracks the development of competitive alternatives with sufficient precision, the only possible result is to remove the local switching exemption in its entirety, not to remove the underlying local switching UNE. Put in other words, if the choice is between a mandatory local switching UNE everywhere, and a mandatory local switching UNE nowhere, the only pro-competitive result – and the only result that squares with the record evidence showing impairment from lack of access to the ILECs' local switching – is to ensure that requesting carriers can obtain the local switching UNE throughout the United States upon request from all ILECs.

III. THE COMMISSION SHOULD REQUIRE ILECS TO UNBUNDLE INTEROFFICE PACKET TRANSPORT AND INTEROFFICE PACKET SWITCHING FUNCTIONALITIES

Several petitioners, including AT&T, Intermedia, MCI WorldCom and Sprint, agreed with CompTel that the Commission should reconsider its decision on unbundling of packet switching and require, at a minimum, unbundling of interoffice packet transport and interoffice packet switching functionalities. As CompTel explained in its petition, when the Commission applied the impair standard to packet switched functionalities, it inexplicably applied the standard in a different matter, considering only unbundling of digital subscriber line access multiplexers ("DSLAMs"). However, packet switched services consist not only of packet

²⁹ See *id.* at ¶256 ("Indeed, based on financial analysts' reports of competitive LECs' operations, a significant number of requesting carriers currently self-provisioning switches are not generating net income (*i.e.*, profits).").

switching network elements, which include both DSLAMs and interoffice packet switching, but also combinations of packet transport and switching elements, which have unique characteristics that justify definition as unbundled network elements. CompTel and its members have submitted evidence on the record that, even if requesting carriers install their own DSLAMs, the ILECs' failure to provide access to interoffice packet transport and interoffice packet switching impairs a requesting carrier by materially diminishing that carrier's ability to provide the packet switched services it seeks to offer.

CompTel supports Intermedia's request that the Commission reconsider its decision not to require the unbundling of packet switching and transport network elements. As Intermedia explains in its petition, Intermedia and e.spire demonstrated the need for the Commission to establish several data-specific UNEs to promote the deployment of advanced telecommunications capability, including ports on data switches and routers, as well as the associated connectivity between those ports appropriate to the type of packet-switched protocols used in frame relay.³⁰ CompTel agrees with Intermedia that the Commission erred by equating frame relay and ATM network elements with the DSLAM functionality, disregarding evidence on the record, and misapplying the impair standard.³¹

As MCI WorldCom observes in its petition for reconsideration, the Commission's conclusion not to require the unbundling of ILEC packet switching facilities, including DSLAMs, is at odds with its finding that competitors are impaired in their ability to offer advanced services without access to packet switching facilities.³² CompTel agrees with MCI

³⁰ Intermedia Petition at 4-5.

³¹ *Id.* at 5-7.

³² *Third Report and Order* at ¶ 86, citing *Local Competition First Report and Order*, 11 FCC Rcd at 15528, 15531, 15624.

WorldCom that, although the impairment finding is sound and based on substantial record evidence, there is no evidence to support the Commission's assumption that ILECs might potentially deploy advanced services less ubiquitously if required to lease unbundled DSLAMs and packet switching.

ILEC investment activities are market driven, and the ILECs' deployment plans, service offering announcements, and public statements over the past year demonstrate that ILECs are deploying DSLAMs and packet switching widely and rapidly to enable them to offer both advanced data services and basic voice services.³³ Indeed, the Commission itself has found that the ILECs' aggressive deployment of DSL can be attributed in large part to the deployment of cable modem service.³⁴ Therefore, requiring ILECs to unbundle DSLAMs and packet switching will not slow deployment of advanced services, because it will not affect the primary market cause for deployment: *i.e.*, deployment of cable modem services.

The risk to the ILECs of not investing in the DSL and packet switching technologies needed to provide advanced services before the cable companies gain a first-to-market advantage far outweighs the risk of losing some revenue to competitive carriers who use an ILEC's unbundled DSLAM and packet switching, particularly when the ILECs already have a huge share of the residential and small business markets.³⁵ In any event, because TELRIC pricing methodology explicitly incorporates the costs associated with risk by using a risk-adjusted cost of capital, ILECs would be compensated for any substantial risks associated with

³³ See MCI WorldCom Reconsideration Petition at 5.

³⁴ See *id.* at 6, citing *Broadband Today, A Staff Report to William E. Kennard, Chairman, Federal Communications Commission*, October 1999, at 27.

³⁵ See MCI WorldCom Reconsideration Petition at 7-8.

ILEC DSLAM and packet switching investments, as MCI WorldCom correctly observes in its petition for reconsideration.³⁶

CompTel also agrees with MCI WorldCom that the Commission's decision not to unbundle packet switching, despite its own finding of material impairment,³⁷ is legally insupportable. It is difficult to imagine a situation in which it would be consistent with the Act to refuse to unbundle any element if the Commission has determined that, without access to that element, the ability of competitive carriers to compete would be materially diminished. Regardless of whether a refusal under these circumstances could be justified under the statute, nothing in the record supports a finding of a non-statutory factor that would outweigh the finding of impairment under the statute.

CompTel agrees with Sprint that the Commission failed to consider adequately the effect of the collocation costs on the ability of competitive carriers to compete with ILECs for packet switching services. As Sprint demonstrates in its petition, the fixed costs of collocation are so substantial that competitive carriers cannot realistically be expected to incur those costs in smaller end offices. CompTel also agrees that the Commission should eliminate the "spare copper" condition of the remote terminal exception in Rule 319(c) (*i.e.* requesting carrier may obtain packet switching if there are no spare copper loops capable of supporting xDSL services requesting carrier seeks to offer).³⁸ ILECs can game the rule by making available a single copper loop to avoid the unbundling obligation and thereby hinder the Commission's objective of maximizing deployment of advanced services.

³⁶ See *id.* at 8-9.

³⁷ See *id.* at 9-10.

³⁸ See Sprint Petition at 13-14.

IV. THE FCC SHOULD CLARIFY THE OBLIGATION TO UNBUNDLE OS/DA DATABASES

AT&T, MCI WorldCom and RCN ask the Commission to clarify the unbundling requirements for Operator Services and Directory Assistance ("OS/DA") databases.³⁹ Specifically, AT&T urges the Commission to clarify that: (1) ILECs must demonstrate capability to implement customized routing in a timely manner before they may withdraw the OS/DA UNE; (2) state public utility commissions should resolve disputes regarding customized routing alternatives, and ILECs must continue to provide OS/DA as a UNE during any disputes; (3) ILECs must provide advanced notice of discontinuation of OS/DA as a UNE and establish reasonable transition periods during which OS/DA continues to be available at TELRIC; and (4) ILECs may not impose unreasonable terms upon customized routing alternatives, such as Ameritech's requirement that competing carriers establish collocation in every office where customized routing is requested. CompTel supports these clarifications because, as AT&T demonstrates, the availability of customized routing is an essential prerequisite to the use by competitive carriers of alternative OS/DA services. Each of the clarifications are necessary in order to ensure that ILECs demonstrate that customized routing is in fact available to competitive carriers before OS/DA may be withdrawn as an unbundled network element.

MCI WorldCom's petition for reconsideration emphasizes how important the unbundling of OS/DA is to competition. The ILECs have the only unimpeded access to the customer information needed for OS/DA databases for more than 96 percent of all customers. The ILECs can use this unreasonably to raise the costs of competitors or otherwise impede competitors. ILECs have taken advantage of this power by raising the costs of competitive

³⁹ See AT&T Petition at 19-20; MCI Reconsideration Petition at 18-19; MCI Clarification Petition at 16-20; RCN Petition at 3-6.

carriers.⁴⁰ Therefore, CompTel supports MCI WorldCom's request that the Commission clarify that ILECs have the obligation to provide unbundled OS/DA unless they provide customized routing and a compatible single protocol providing competitive carriers access that is as efficient as the access that ILECs provide to their own OS/DA.

CompTel also agrees with RCN that unbundling must be required for OS because in those locations where operators are the alternative routing for emergency 911 calls, the unavailability of local ILEC operators to route emergency calls expeditiously and efficiently to Public Safety Answering Points ("PSAPs") would significantly impair competitive carriers' ability to offer local exchange service. As RCN demonstrates in its petition, OS/DA unbundling is necessary for public safety, particularly because operators serving some communities must be able to respond to emergencies themselves without recourse to PSAP. If the ILEC is the only OS provider that can meet the needs of the community in an emergency by means of local operators, then competitive carriers are denied the ability to compete in that community. Finally, CompTel agrees with RCN that the Commission's determination that CLEC reliance on third-party directory assistance is not cost effective is erroneous.⁴¹

V. COMPTTEL SUPPORTS THOSE PETITIONS REQUESTING THE COMMISSION TO RECONSIDER ITS DECISION ON LINE-SHARING, BUT IT ADDRESSES THESE ISSUES IN THE LINE-SHARING PROCEEDING

AT&T and MCI WorldCom both petitioned the Commission in this proceeding to reconsider its decision on line-sharing. They also raised these same issues in their petitions for reconsideration in the line-sharing proceeding. Although CompTel fully supports both of their

⁴⁰ See MCI WorldCom Reconsideration Petition at 19.

⁴¹ RCN Petition at 6.

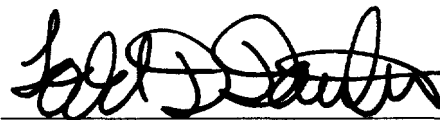
petitions, CompTel addresses this issue in the line-sharing proceeding, and therefore does not discuss the issue further here.

VI. CONCLUSION

For the foregoing reasons, the Commission should deny the petition for reconsideration filed by Bell Atlantic, and grant the petitions for reconsideration filed by AT&T Corp., Birch Telecom, Inc., Intermedia Communications Inc., MCI WorldCom, Inc., RCN Telecom Services, Inc. and Sprint Corporation.

Respectfully submitted,

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I, Tracey Sorenson, hereby certify that on this 22th day of March, 2000, I caused a true and correct copy of the foregoing **“Comments of The Competitive Telecommunications Association on Petitions for Reconsideration”** to be served, via first-class mail, postage prepaid, upon the following:

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